

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STATE OF NEW YORK, et al.,

Plaintiffs,

-against-

NEXT MILLENNIUM REALTY, LLC, et al.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is the defendants' Vishay GSI, Inc, Vishay EFI, Inc. and Vishay Intertechnology, Inc. (collectively the "Vishay defendants") renewed letter application dated August 22, 2014 for a pre-motion conference for a proposed motion to disqualify Gradient Corporation ("Gradient") as a consulting and/or testifying expert in this litigation and to restrain parties to this litigation from the use of work-product documents prepared by Gradient (the "Gradient documents"). Defendants 101 Frost Street Associates, LP and Next Millennium Realty LLC (collectively the "Frost Street defendants") oppose the application.

A settlement conference was held on September 18, 2014, and it appears that the CV 06-1133 action has been settled in principle with documents consisting of a Supplemental Consent Decree and an Administrative Consent Decree to be filed subject to the district court's approval. Thus, any threat that the Gradient documents and/or expert would be utilized in the CV 06-1133 litigation is virtually nil at this point. To the extent that the Vishay defendants are concerned that the CV 03-5985 litigation raises the risk that such documents might be utilized, that risk is remote at best. At the present time, there are pending motions for summary judgment filed in CV 03-5985 action which to the court's knowledge do not rely on the Gradient documents. The resolution of that motion may obviate the need for a trial or at the very least delay it. There is simply no present effort to make use of Gradient documents or expert testimony and as such no live dispute before the court. Accordingly, the Vishay defendants' application is denied, with leave to renew should circumstances change.

Dated: Central Islip, New York
September 22, 2014

SO ORDERED:

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge